

NOVEMBER 6, 2001

BAK COMMUNICATIONS, LLC
Petition for Finding of Public Convenience
And Necessity to Provide Service as an
Interexchange Telephone Utility

ORDER GRANTING AUTHORITY
TO PROVIDE INTEREXCHANGE
SERVICE AND APPROVING
SCHEDULE OF RATES AND
TERMS AND CONDITIONS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

In this Order, the Commission grants BAK Communications, LLC (BAK Communications, LLC or Company) the authority to provide interexchange service as a reseller throughout the State of Maine and approves the Company's Terms and Conditions and Rate Schedules, Pages 1-10, as filed on October 17, 2001. Pursuant to Chapter 280, §§ 11 and 12, we exempt BAK Communications, LLC from the requirements of Chapter 210, *Uniform System of Accounts*, and 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

I. APPROVAL OF APPLICATION TO SERVE

On October 17, 2001, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, BAK Communications, LLC applied for authority to provide interexchange service in Maine. Before we grant approval under § 2102 for another public utility to provide service, 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to provide service in a location where a utility is already authorized to provide, or is providing, the same or similar service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety

and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting BAK Communications, LLC the authority to provide interexchange services in Maine will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

BAK Communications, LLC's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local and interexchange services in Maine.

II. SERVICE TERRITORY

BAK Communications, LLC has requested authority to provide interexchange service throughout the state. We grant that authority.

III. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES

We allow the terms and conditions proposed by BAK Communications, LLC to go into effect. BAK Communications, LLC has used the Commission's standard terms and conditions that comply with Maine law and the Commission's Rules. We have reviewed the Company's petition, Terms and Conditions, and Rate Schedules, and they appear to comply with Maine law and the Commission's Rules. Nevertheless, if there is any conflict between a provision in the Company's terms and conditions and the Commission's Rules or a statute, the rule or statute will control.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of BAK Communications, LLC's services and rates in the market place provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by BAK Communications, LLC to go into effect.

IV. PAYMENT OF ACCESS CHARGES

The Commission has granted authority to BAK Communications, LLC to provide interexchange service as a switchless reseller.¹ Our approval of BAK Communications, LLC's application to provide interexchange service in Maine is conditioned on the payment of access charges to local exchange carriers (LECs) who have on file with the Commission approved access charge rate schedules. To the extent that BAK Communications, LLC provides facilities-based interexchange service, it must pay access charges directly to local exchange carriers. If BAK Communications, LLC begins to provide facilities-based

¹We define switchless resellers as entities which do not own, lease, or control any switching facilities, or private lines, that it will use to provide telecommunication services in Maine. A reseller who owns a switch in another state, and plans to use that switch to switch or carry Maine traffic, is a facilities-based interexchange carrier. A reseller who does not own facilities in Maine or any other state, or who owns facilities in another state but does not plan to use that switch to carry Maine traffic, is a switchless reseller.

interexchange service, it shall notify the Commission and all LECs from which it obtains access, as required by the ordering paragraphs.

BAK Communications, LLC states that at present it will be offering service only as a switchless reseller. Switchless resellers do not pay access charges to local exchange carriers. Instead, access charges are paid by an underlying facilities-based interexchange carrier. As a condition of granting authority to a switchless reseller to provide intrastate service in Maine, BAK Communications, LLC's underlying facilities-based carrier must also have authority to provide intrastate service in Maine. BAK Communications, LLC has stated that Sprint will be the underlying carrier from which it purchases interexchange services that it resells. Sprint is authorized by the Commission to provide intrastate facilities-based interexchange service and must pay access charges for the intrastate interexchange services it sells to switchless resellers providing interexchange service in Maine. If BAK Communications, LLC begins to use another carrier or carriers, those carriers must be authorized to provide intrastate facilities-based interexchange service, and BAK Communications, LLC shall notify the Commission and all local exchange carriers that it uses for the provision of access services as required by the ordering paragraphs.

V. WAIVERS; REPORTING REQUIREMENTS

Pursuant to sections 11(A) and 12(A) of Chapter 280, BAK Communications, LLC is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which governs approvals for reorganizations and contracts with affiliated interests. Pursuant to sections 11(A) and 12(A) of Chapter 280, which govern carriers' interexchange activities, BAK Communications, LLC is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which govern approvals for reorganizations and contracts with affiliated interests. Because BAK Communications, LLC's rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements.

However, as required by Chapter 280, § 11(A), BAK Communications, LLC must report its annual intrastate gross operating revenues, its revenues derived from sales to other carriers, its annual intrastate minutes of use for the purpose of determining its regulatory assessment, and such other information requested by the Commission.² If BAK Communications, LLC resells service to other facilities-based or switchless telephone service providers, the Company must maintain its records in a way that it is able to separately identify those sales. Pursuant to Chapter 280, § 11(B), the Company

shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all information that is necessary to calculate access or interconnection charges in accordance with

²The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

this Chapter. Those records shall be maintained for a minimum of 2 calendar years.

The exemptions from the affiliated interest approval requirements of 35-A M.R.S.A. §§ 707 and 708 granted by Chapter 280, § 12(A) are subject to the notice requirements contained in Chapter 280, § 12(B) and (C) and in the ordering paragraphs below. BAK Communications, LLC shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in the ordering paragraphs below. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

VI. OTHER REQUIREMENTS

BAK Communications, LLC shall comply with all applicable rules of the Commission and statutes of the State of Maine, including the customer notification rule described in Ordering Paragraph 8.

VII. ORDERING PARAGRAPHS

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of BAK Communications, LLC to provide interexchange service throughout the State of Maine;
2. Approve BAK Communications, LLC's proposed Terms and Conditions and Rate Schedules, Pages 1-10, as filed on October 17, 2001. These Schedules shall become effective on the date of this Order.
3. Order that BAK Communications, LLC, or an underlying facilities-based interexchange carrier authorized to provide interexchange service in Maine, shall pay interexchange access charges as required approved access rate schedules filed by local exchange carriers;
4. Direct that BAK Communications, LLC shall notify each local exchange carrier in whose service area it intends to originate or terminate calls the date on which it will commence service if it will be providing facilities-based interexchange service, as defined in this Order;
5. Direct that BAK Communications, LLC shall notify the Commission and all local exchange carriers from which it obtains access services of any change in its underlying carrier within 30 days following the change if it is providing resold interexchange service. Any underlying carrier used by BAK Communications, LLC must have the authority to provide intrastate interexchange service in Maine. BAK Communications, LLC shall immediately

inform the Commission and all local exchange carriers in the State of Maine from which BAK Communications, LLC will be purchasing access services if there is any change in its operations that will result in its carrying, switching, or any processing of any of its own traffic, at which time BAK Communications, LLC shall begin to pay access charges directly to those local exchange carriers that have approved access charge schedules on file with the Commission;

6. Exempt BAK Communications, LLC from the requirements of Chapter 210 of the Commission's Rules, except that it must report certain revenue and minutes of use information, as required by Chapter 280, § 11(A), on or before April 1 of each year;

7. Exempt BAK Communications, LLC from approval requirements of 35-A M.R.S.A. §§ 707 and 708, but shall provide notice to the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of or of any entity that owns more than 50% of BAK Communications, LLC. The notice required by this subsection shall be filed within 10 days following any reorganization described herein, as required by Chapter 280, § 12(B). As required by Chapter 280, § 12(C), BAK Communications, LLC shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and change of its contact person. BAK Communications, LLC shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, BAK Communications, LLC shall amend its rate schedules and terms and conditions to reflect any change in identity; and

8. Direct that BAK Communications, LLC shall comply with all applicable rules of the Commission, including the requirement in Chapter 280, § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate that is greater than 20%.

Dated at Augusta, Maine this 6th day of November 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch

Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.